
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

ANTHONY LEON SUMMERS, §
§
Petitioner, §
§
versus § CIVIL ACTION NO. 1:05-CV-319
§
§
DIRECTOR, TDCJ-CID, §
§
Respondent. §

**MEMORANDUM ORDER ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner Anthony Leon Summers, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning the petition. The magistrate judge recommends the petition be dismissed without prejudice for want of prosecution.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. No objections were filed to the magistrate judge's Report and Recommendation.¹

¹ This petition concerns a prison disciplinary conviction. The magistrate judge's recommendation was based on petitioner's failure to comply with a court order directing him to file a supplemental petition providing the case number of the disciplinary conviction being challenged. On the same day the Report and Recommendation was submitted, petitioner filed a supplemental petition. However, the supplemental petition did not provide the case number of the disciplinary conviction being challenged.

ORDER

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered dismissing the petition.

In addition, the court is of the opinion petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying federal habeas relief may not proceed unless a judge issues a certificate of appealability. *See 28 U.S.C. § 2253*. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not establish that he would prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. If the petition was dismissed on procedural grounds, the petitioner must show that jurists of reason would find it debatable: (1) whether the petition raises a valid claim of the denial of a constitutional right and (2) whether the district court was correct in its procedural ruling. *Id.* at 484; *Elizalde*, 362 F.3d at 328. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

Here, the petitioner has not shown that any of the issues raised in the petition are subject to debate among jurists of reason, or that the procedural ruling was incorrect. As a result, a certificate of appealability shall not issue.

SIGNED at Beaumont, Texas, this 20th day of May, 2007.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE